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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/062,551	04/20/98	WALKER	K W2450002

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EXAMINER

CHO, D

ART UNIT

PAPER NUMBER

3762

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/062,551**

Applicant(s)  
**Walker**

Examiner  
**CHO, David J.**

Group Art Unit  
**3735**



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-22 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-7, 9, 14-18, and 22 is/are rejected.

☒ Claim(s) 8, 10-13, and 19-21 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 08/627,011, filed on April 3, 1996.

***Specification***

2. It is noted that this application claims subject matter disclosed in prior copending Application No. 08/627,011, filed April 3, 1996 and inserted as the first sentence of the specification as provided under 35 U.S.C. 119(e) or 120. See 37 CFR 1.78(a). *However, the current status of all nonprovisional parent applications referenced should be included.*

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claims 1, 7, 14 and 15, there is an improper antecedent basis for the second occurrence of "a removable lid".

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Kerwin et al.  
'5,449,009.

Kerwin et al. discloses a fluid collection and disposal system which comprises a collection vessel 20 designed to be cleaned by a servicing unit 11 after use. Figure 2 discloses the vessel comprising a vacuum connection port 23 connected to a source of vacuum and a patient fluid inlet port 24 whereby during servicing of the collection unit 12, the ports 23 and 24 operate as inlet ports for passage of cleaning fluids into the vessel and the port 25 operates an outlet port to allow collected body fluids and subsequent cleaning fluids, to be withdrawn from the vessel by operation of the servicing unit and disposed of properly.

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***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

8. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashmer et al. '4,465,485.

Kashmer discloses a suction canister system comprising a lid 12, which may be removable; an inlet port (29) connected to a tube connector 32 that extends to a source of body fluids; a suction port (22) connected to connector 26, a suction source; and an unitary shut-off valve/filter element (40) that is adapted to terminate suction through the suction opening when liquid rises in the receptacle at a predetermined level. In regards to claim 4, Kashmer et al. discloses the connector 26 may be removed from the suction port, see figure 3. However, Kashmer does not disclose the suction tube extending to the bottom of the canister.

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It would have been obvious manner of design choice to modify Kashmer by having the suction port also extend to the bottom, since applicant has not disclosed that having the suction port extend to the bottom solves any stated problem or is for any particular purpose and it appears that the suction port would perform equally well in any particular depth. Therefore, it is merely a matter of engineering design choice, and thus does not serve to patentably distinguish over the prior art.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kashmer et al. in view of Blenkush '5,033,777.

Kashmer et al. discloses the invention substantially as claimed except for the outlet port is sealed by a puncturable membrane.

Blenkush teaches a coupling system comprising a male insert member 12 and a female receptacle assembly 14, wherein the male insert is configured for insertion into the female assembly. In addition, Blenkush teaches a cylindrical seal 20 made from resilient material which engages the bore 30 to form a fluid tight seal with the wall of the bore.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Kashmer et al. with the puncturable membrane as taught by Blenkush in order provide a fluid tight seal.

10. Claim 6 is rejected under 35 U.S.C. § 103 as being unpatentable over Kashmer et al. in view of Beguiristain '3,612,089.

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Kashmer et al. discloses the invention substantially as claimed except for the check valve comprising a floatball operably coupled to a needle valve.

Beguiristain teaches a vacuum reactivator for use with an oral evacuator comprising a ball float valve 32 is provided to turn off the vacuum when the liquid in the chamber reaches a predetermined depth and a plunger 44 is provided to manually disengage the ball valve from its seat after the chamber has been drained to restore vacuum, see figures 1 and 3. Moreover, it is the examiner's position that the plunger 44 of Beguiristain corresponds to applicant's claimed needle valve.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Kashmer et al. with the floatball and needle valve as taught by Beguiristain in order to provide better control of the vacuum within the container.

11. Claims 7 and 15-16 are rejected under 35 U.S.C. § 103 as being unpatentable over Kerwin et al. '5,449,009 in view of Leviton '4,384,580.

Kerwin discloses a fluid collection and disposal system which includes a reusable collection unit (12) designed to be cleaned by a servicing unit (11) after use. The collection unit comprises a vessel (20) with a lid (22) including three opening therethrough which extend into the vessel. Port 23 operates as the vacuum connection port to supply a source of suction, port 24 operates as a patient fluid inlet port, and port 25 is in fluid flow connection with the site glass 21. During service of the collection unit, the ports 23 and 24 operate as inlet ports for passage of cleaning fluid into the vessel and the port 25 operates an outlet port to allow collected body fluids

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and cleaning fluid to be withdrawn from the vessel by operation of the servicing unit. Also included in Kerwin is a disposable manifold 13 that is placed on top of the vessel lid in order to attach the collection unit to a suction source and to collect fluid from a patient. However Kerwin does not disclose the second inlet and outlet port.

Leviton teaches a fluid flow adapter suitable for use in a fluid collection container includes a first open tube with second and third opened tubes attached thereto. The second and third tubes (20, 22) are in direct fluid communication with the first tube but they are not in direct fluid communication with the each other. This arrangement allows the second and third tubes to serve as fluid inlet and fluid outlet openings for the collection container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Kerwin with the second inlet and outlet port as taught by Leviton in order to provide a system through which fluids can be collected serially.

12. Claims 9, 14, 17 and 18 are rejected under 35 U.S.C. § 103 as being unpatentable over Kerwin et al. '5,449,009 in view of Leviton and further in view of Griparis '3,833,417.

Kerwin in view of Leviton discloses the invention substantially as claimed. However Kerwin in view of Leviton does not disclose the spraying means.

Griparis teaches an apparatus for spray cleaning the soiled interior surfaces of a tank by applying a burst of cleansing liquid through a sprayer, see figure 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the invention of Kerwin in view of Leviton with the spraying means as



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taught by Griparis in order to minimize the user exposure to potentially dangerous or infectious fluids.

### ***Double Patenting***

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 5,741,237. Although the conflicting claims are not identical, they are not patentably distinct from each other because the issuance of the instantly sought claims would extend the rights to exclude sought in the claims of the co-pending patent.

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*Allowable Subject Matter*

15. Claims 8, 10-13 and 19-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,776,118, 4,522,623, 4,347,946, 4,256,109, 3646,935.

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David J. Cho, whose telephone number is (703) 308-0073. The Examiner can normally be reached on Monday-Friday from 7:00 am to 4:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, John Weiss, can be reached on (703) 308-2702. The fax number for this Group is (703) 305-3590 or x3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.

*David J. Cho*

Patent Examiner  
April 2, 1999